

Regulatory Analysis
LSA Document #23-720**I. Description of Rule**

The Office of the Indiana Attorney General (OAG) is proposing a new administrative rule by replacing the Tort Claim Form (Form), which is issued by the OAG. [IC 34-13-3-6](#) mandates that the Indiana Attorney General adopt a form that prescribes the means by which a claim shall be filed against the State of Indiana. A form as described in [IC 34-13-3-6](#) is currently in effect, however, changes to the Form must be revised to reflect changes in the list of statutory immunities provided by the Tort Claims Act, which are included with the Form. The OAG is proposing an updated version of the Form in rule to include recent changes to statutory immunities (Proposed Rule or Rule).

a. History and Background of the Rule – The Proposed Rule is being issued pursuant to statutory mandates provided by the Indiana General Assembly in [IC 34-13-3-6](#). The OAG has had a Form, in compliance with legislative statutory requirements since 2011. The Form allows members of the public to formally notify the State of a complaint against which the OAG may be required to respond. The Form has been utilized extensively for numerous years in succinctly intaking, documenting and responding to claims against the State. The OAG has done so in accordance with the statutory procedure set forth by the Indiana General Assembly. Now, the OAG must revise the Form to incorporate changes from the most recent legislative session, which document a listing of immunities, and are to be included in the Form.

b. Scope of the Rule – The Proposed Rule seeks to revise the Form and bring it into compliance with the current applicable statutory provisions. The Proposed Rule will serve to repeal and replace the existing form as the old version expires in November of this year.

c. Statement of Need – The Proposed Rule is necessary as the Indiana General Assembly specifically directs the OAG to create and promulgate such a form for purposes of implementing a standardized method for which claims may be raised against the State. The Form also assists the State in responding in a timely and satisfactory manner to tort claims. This state statutory requirement is not optional. The Form is a necessary element to the procedure through which a claimant must make claims known to the State. The Form must be updated to correctly reflect statutory changes which should be noted in the Form.

d. Statutory Authority for the Proposed Rule – [IC 34-13-3-6](#) states, in part:

(b) The attorney general, by rule adopted under [IC 4-22-2](#), shall prescribe a claim form to be used to file a notice under this section. The claim form must specify:

- (1) the information required; and
- (2) the period of time that a potential claimant has to file a claim.

[IC 34-13-3-6](#)(b). The statutory provision shown above directs the OAG to issue a rule consistent with the Proposed Rule and Form now being submitted. The OAG is promulgating the Proposed Rule in compliance with the legislative directives set forth in the Tort Claims Act.

e. Fees, Fines, and Civil Penalties – The Form does not increase or otherwise add any fine, fee, or penalty. The Form merely places the State on notice that a potential claim is being filed. The Form does not require a person to pay a fee, fine, or penalty in filing such a notice with the State.

II. Fiscal Impact Analysis

a. Anticipated Effective Date of the Rule: January 1, 2023.

b. Estimated Fiscal Impact on State and Local Government – The Rule does not impact state expenditures, revenues, or allocation. The Form is provided in electronic format and has been used for numerous years. The changes occurring in the Form serve only to reflect updates in the statutory listing of immunities for government actors.

c. Sources of Expenditures or Revenues Affected by the Rule – N/A- The Rule does not impact expenditures or revenues by State agencies or local governments.

III. Impacted Parties

The parties impacted by the Proposed Rule will not change from the parties which are currently impacted by the current version of the Form. The OAG is required to maintain the Form and produce it for use by State agencies and operators of State vehicles pursuant to [IC 34-13-3-6](#). Members of the public must utilize the Form in order to initiate a claim against the State. Mainly, State and governmental entities will need to utilize the Form in its updated form for dispersion.

IV. Changes in Proposed Rule

The changes proposed are minimal. The current form and version of the rule includes a list of immunities which are enumerated in [IC 34-13-3-3](#). The list of immunities are provided at the bottom of the current form. The list of immunities is being expanded to reflect legislative changes incorporated into [IC 34-13-3-3](#) during 2022 and 2023

legislative sessions. Specifically, the OAG is proposing to add the following additions, to mirror the Tort Claims Act, through subsection (a)(17)(C):

- (17) Injury to the person or property of a person under supervision of a governmental entity and who is:
- (A) on probation;
 - (B) assigned to an alcohol and drug services program under [IC 12-23](#), a minimum security release program under [IC 11-10-8](#), a pretrial conditional release program under [IC 35-33-8](#), or a community corrections program under [IC 11-12](#); or
 - (C) subject to a court order requiring the person to be escorted by a county police officer while on or in a government building (as defined in [IC 36-9-13-3](#)) owned by a county building authority under [IC 36-9-13](#), unless the injury is the result of an act or omission amounting to:**
 - (i) gross negligence;**
 - (ii) willful or wanton misconduct; or**
 - (iii) intentional misconduct.**

[IC 34-13-3-3](#)(a)(17)(c).

Additionally, the OAG is seeking to add the following language from [IC 34-13-3-3](#)(b) to accurately reflect the limits of immunity for governmental entities or employees:

(b) This subsection applies to a cause of action that accrues during a period of a state disaster emergency declared under [IC 10-14-3-12](#) to respond to COVID-19, if the state of disaster emergency was declared after February 29, 2020, and before April 1, 2022. A governmental entity or an employee acting within the scope of the employee's employment is not liable for an act or omission arising from COVID-19 unless the act or omission constitutes gross negligence, willful or wanton misconduct, or intentional misrepresentation. If a claim described in this subsection is:

- (1) a claim for injury or death resulting from medical malpractice; and**
- (2) not barred by the immunity provided under this subsection;**

the claimant is required to comply with all of the provisions of [IC 34-18](#) (medical malpractice act).

The Proposed Rule changes do not add new substantive acts or obligations associated with filing a claim against the State. The revisions only reflect the most recent changes made to the governmental immunities provided by the Tort Claims Act, included within the Form.

V. Benefit Analysis

a. Estimate of Primary and Direct Benefits of the Rule – Claimants, members of the public, and counsel for claimants will have the most up to date statement on the list of immunities for which a governmental entity or employee is not liable. Members of the public will save time, money, and other resources by having a full understanding of which actors and actions are exempted from liability. Where a member of the public receives early notification of the enumerated immunities set forth in the Indiana Code, claimants may save time and money by declining to file exempted, inapplicable, or frivolous claims for which a governmental entity may not be liable.

b. Estimate of Secondary or Indirect Benefits of the Rule - The State may receive fewer claims that must be responded to where the listed immunities are fully stated. Providing a complete listing of immunities to the public may prevent claims which hold no legal basis from being filed and/or pursued. Although this information is available in statute, streamlining an updated summary of immunities in the Form will be a benefit to both the public and the State in averting baseless litigation from going forward.

c. Estimate of Any Cost Savings to Regulated Industries – Changes to the Form will not result in any cost savings to a regulated industry beyond the benefits noted above.

VI. Cost Analysis

a. Estimate of Compliance Costs for Regulated Entities – Updating the Form to reflect the most recent changes to Indiana law will have nominal costs associated with the change. The OAG is able to produce the Form in electronic format. Although the Form is available as a written hard copy, the costs associated with producing the changes indicated above are minimal. Further, as discussed above, there are no costs associated with a claimant's obligation to complete the Form and submit it with a governmental entity. Updating the Form will require little to no additional costs or time in reflecting the changes to the Form.

b. Estimate of Administrative Expenses Imposed by the Rules – The changes which the OAG seeks to incorporate into the Form are already enumerated in State statute. The Form merely lists the immunities of which claimants should already be aware. Claimants and members of the public will not have to spend any additional time or expense in completing the Form. The procedure for filing the Form is not changed. The changes serve only to put potential claimants on notice of changes to legislatively-created immunities.

c. The fees, fines, and civil penalties analysis required by [IC 4-22-2-19.6](#) – The Proposed Rule does not add or increase, or in anyway require claimants to pay a fee, fine, or civil penalty. Therefore, analysis under [IC 4-22-2-19.6](#) is inapplicable.

VII. Sources of Information

a. Independent Verifications or Studies – No studies or independent research was utilized in determining the impacts of costs and benefits concerning the Rule at issue.

b. Sources Relied Upon in Determining and Calculating Costs and Benefits – The OAG did not use outside sources in determining the costs and benefits associated with promulgating the Rule. The practical impact of the Rule will not change from the OAG's prior practice, and costs associated with producing the Form for public access are nominal.

VIII. Regulatory Analysis

As discussed above, the benefits of the Proposed Rule far exceed the costs, which are virtually "zero". Members of the public, claimants, and their counsel will have a readily available statement of immunities that reflect the most recent changes to the Indiana State code. Not only will members of the public be better informed on the potential viability of a claim, but claimants are more likely to avoid needlessly spending resources on claims which have no legal viability. The State will also benefit from producing an updated listing of governmental immunities within the Form because claimants are less likely to file a claim that is excepted under a statutory immunity.

*First Notice of Public Comment Period with Proposed Rule: [20231025-IR-010230720FNA](#)
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